FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 24 1945
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF ON BEHALF OF THE WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE*

PAUL O'DWYER,
New York, N. Y.,
Attorney for the Workers Defense League, *Amicus Curiae.*

MAX DELSON,
CARL RACHLIN,
LEONARD COHEN,
New York, N. Y.,
of Counsel.

INDEX

Subject Index

PAGE

Brief on behalf of the Workers Defense League as *amicus curiae* 1

Synopsis of Sections of the Act 2

Argument 3

I. Sections 7 and 16 are a denial of those rights guaranteed by the First Amendment to the United States Constitution and protected against invasion by the States under the Fourteenth Amendment to the United States Constitution 3

(a) Section 7 3

(b) Section 16 7

II. (a) Section 15 is discriminatory and is a denial to unions of the protection under the Fourteenth Amendment to the United States Constitution 8

(b) The term "work permits" is so vague and nebulous as to require speculation as to its meaning 10

III. Sections 7 and 16 conflict with and deprive petitioners of rights expressly granted to them in the National Labor Relations Act 10

Conclusion 14

Table of Cases Cited

	PAGE
Allen Bradley, etc. v. Wisconsin Employment Relations Board, 315 U. S. 740	11, 12
American Steel Foundries v. Tri-City Central Council, 257 U. S. 184, 209	4
Bell, In re, 190 Cal. 2nd 488	10
Bryant v. Zimmerman, 278 U. S. 63	6
Cantwell v. Conn, 310 U. S. 296	4, 5
Carpenter & Joiners Union v. Ritters Cafe, 315 U. S. 722	6
Follett v. McCormick, 321 U. S. 573	6
Gibbons v. Ogden, 9 Wheat. (U. S.) 1	11
Hague v. CIO, 307 U. S. 496	3
Herndon v. Lowry, 301 U. S. 242	4
International Text Book Co. v. Pigg, 217 U. S. 91, 110	4
Jones v. Opelika, 316 U. S. 584, overruled 319 U. S. 103	6
Lanzetta v. New Jersey, 306 U. S. 451	10
Lovell v. Griffin, 303 U. S. 444	6
Manchester v. Leiby, 117 Fed. 2nd 661, cert. den. 313 U. S. 562	5
Murdock v. Pennsylvania, 319 U. S. 105	6
Napier v. Atlantic Coastline Railroad Co., 272 U. S. 605	11, 12
NLRB v. Jones & Laughlin Steel Corp., 301 U. S. 1, 33	4
Nebbia v. New York, 291 U. S. 502	6

PAGE

Schenck v. U. S., 249 U. S. 47 4

Schneider v. State, 308 U. S. 147 ..... 3, 5, 7

Stromberg v. California, 283 U. S. 359 10

Ex Parte Thomas, 141 Texas 591 6

Thomas v. Collins, —— U. S. ——, 65 S. Ct. 315 ..... 3, 4, 5

Thornhill v. Alabama, 310 U. S. 88 ..... 3, 4

U. S. v. Carolene Products, 304 U. S. 144, 152 n. 4 5

West Virginia v. Barnette, 319 U. S. 624 5

Yick Wo v. Hopkins, 118 U. S. 356 9

Statutes Cited

Act of Congress:

49 Stat. 449 10

49 Stat. 452 11

49 Stat. 453 13

Alabama Acts 1943, page 253 1

McKinney's Consolidated Laws of New York, Volume 8, Sections 56-58 7

Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF ON BEHALF OF THE WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE*

The Workers Defense League, a non-profit organization with several thousand members in various parts of the United States, dedicated to the defense of the legal and constitutional rights of the people of the United States, and interested in the extension of democracy, with the written consent of the parties herein, asks leave of this honorable court to appear as amicus curiae and urge the unconstitutionality of Sections 7, 15 and 16 of the Alabama statute known as the Bradford Act (Alabama Acts 1943, p. 253) on review before the court, as being embodiments of undemocratic principles.

Synopsis of Sections of the Act

The Supreme Court of Alabama has upheld the constitutionality of Sections 7, 15 and 16 of the Broadford Act. Section 7 provides that all labor organizations "functioning" within Alabama in order to function must file a copy of its constitution and by-laws with the Department of Labor. Thereafter annually the Union must file with the Director of Labor a statement showing

1. the name of the organization
2. the location of its principal office in Alabama
3. the names, addresses, salaries, bonuses, etc. of the principal officers of the Union
4. the date of the regular elections of officers of the Union
5. the number of its paid up members
6. a complete financial statement showing dues, fines, assessments together with all disbursements with the names of recipients and the purpose therefor
7. a complete statement of all the property of the Union including money on hand.

A mailing fee of two dollars is required to file this statement. The reports are to be made available to the Governor of the State, and a copy is to be sent to each member of the Union.

Section 15 provides that it shall be unlawful for any union or officer to collect, demand or receive any money from a person as a "work permit" specifically excepting initiation fees or dues.

Section 16 provides that it is unlawful for any executive administrative, professional or supervisory employee to become a member of a union which admits to membership persons other than those in these classes.

ARGUMENT

I

Sections 7 and 16 are a denial of those rights guaranteed by the first amendment to the United States Constitution and protected against invasion by the States under the Fourteenth Amendment to the United States Constitution.

(A) Section 7.

Under the guise of protecting the public interest (Section 1 of the Bradford Act) the Legislature of Alabama has in this section passed one of the most drastic pieces of anti-union legislation ever enacted by any Legislature in the United States. The rights of any particular union to function in Alabama is denied unless certain conditions set forth by the State Legislature as set forth above on page 2 are complied with. This means that the right to picket, constitutionally protected by this court in *Thornhill v. Alabama*, 310 U. S. 88, the right to distribute leaflets, similarly protected in *Schneider v. State* and the cases considered simultaneously 308 U. S. 147, the right to hold meetings and discuss freely all matters, *Hague v. CIO*, 307 U. S. 496, the right to solicit members to speak in favor of joining a union, protected by this court in *Thomas v. Collins*, —— U. S. ——, 65 S. Ct. 315, together with many of the other functions which are of the very essence of unions are forbidden to the Union.

Whatever meaning "function" may have, and we do not propose to enter into any etymological discussion of the word, it certainly includes the functions of a union set forth above and constitutionally guaranteed by this court. The section in question licenses that right.

Although no formal license is required by Section 7, none is necessary in order to create the effect of one.

Without the permission of the State, the Union may not function. This meaning of "license" is made clear in the well-known case of *International Text-Book Co.* v. *Pigg*, 217 U. S. 91, where this Court stated at page 110:

> "It is true that the statute does not, in terms, require the corporation of another state engaged in interstate commerce to take out what is technically 'a license' to transact its business in Kansas. But it denies all authority to do business in Kansas unless the corporation makes, delivers and files a 'statement' of the kind mentioned in § 1283. The effect of such requirement is practically the same as if a formal license was required as a condition precedent to the right to do such business."

This Court there said that, since the right to engage in interstate commerce was constitutionally protected, the State had no power to license such a right and held the Act unconstitutional. Similarly the right of unions to carry on the activities set forth above has also been constitutionally guaranteed. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33; *American Steel Foundries* v. *Tri-City Central Council*, 257 U. S. 184, 209; *Thornhill* v. *Alabama*, *supra*. A State similarly has no power to "license" such rights.

While this is not an unconditional and absolute right, *Schenck* v. *U. S.*, 249 U. S. 47, without a showing of a clear and present danger, the right of free speech, press and assembly may not be licensed, nor can these bases of our existence be subject to the whims of the Legislature. *Cantwell* v. *Conn.*, 310 U. S. 296; *Thornhill* v. *Ala.*, *supra*; *Herndon* v. *Lowry*, 301 U. S. 242.

An intrusion upon these rights is valid only if there is a grave and impending public danger. *Thomas* v. *Collins*, *supra*. Thus the Court below was in error in asserting that the statute required no license in order to exercise the rights under the first amendment (R. 338).

The Court below further argued (R. 322) that the statute should be indulged with every presumption of validity in

its favor. While this may be a cardinal tenet in the constitutional interpretation of ordinary legislative power, it is well recognized now by this Court that when the question is one of the power of a legislature to abridge the guaranties of the first amendment, and protected against stage action by the fourteenth, no such presumption exists. *Schneider* v. *State*, 308 U. S. 147; *U. S.* v. *Carolene Products*, 304 U. S. 144, 152 n. 4; *West Virginia* v. *Barnette*, 319 U. S. 624; *Thomas* v. *Collins*, *supra*. The mere pronouncement by the State Legislature that it desires to protect the public is not sufficient to forestall attack upon the constitutionality of the enactment. See *U. S.* v. *Carolene Products*, *supra*, p. 152.

Unlike the ordinance in *Manchester* v. *Leiby*, 117 Fed. (2d) 661, cert. den. 313 U. S. 562, Section 7 is no mere identification statute. Section 1 of this statute clearly states the purpose is " * * * to regulate the affairs of labor organizations * * * ". When counsel for petitioners attempted to show that no findings of fact were made by the Legislature nor even hearings held regarding the Bradford Act, the Court excluded such testimony (R. 296). Under these circumstances, it cannot be said an evil is presented which warrants the extreme penalty set forth in the statute. The information required in Section 7 is entirely inconsistent with mere identification. In the *Thomas* case, *supra*, wherein this Court reversed the Texas Courts, only the organizer was circumscribed, and not the whole Union as in the case before us. This is therefore a far greater encroachment upon the rights of speech and assembly and can have no relation to the area of proper police protection.

The statute is general with no apparent substantial interest of the people of the State of Alabama to protect. It is not drawn narrowly to punish specific conduct constitution, a clear and present danger to the State. *Cantwell* v. *Conn.*, *supra*.

At R. 327-8 the Court alluded to the conflict of State Police power and the right of the individual over his private affairs, concluding that there are instances where the private right must give way. But the quotation offered by the Court from *Nebbia* v. *New York*, 291 U. S. 502, clearly states that " * * * a regulation valid for one sort of business * * * may be invalid for another sort * * * ". Unions are not mere commercial organizations. They are non-profit, partly educational and serve a valuable function in modern society. Regulations proper for profit making corporations are not necessarily valid for unions.

Whether unions are on the same high constitutional level as religious organizations is of no relevance at this time. In the Jehovah's Witnesses cases it was shown that the solicitors involved received compensation directly in proportion to the literature distributed. *Follett* v. *McCormick*, 321 U. S. 573; *Murdock* v. *Pennsylvania*, 319 U. S. 105. To no avail were the arguments there that this fact took away the preferred status of the Jehovah's Witnesses as a religious organization. Similarly, although unions collect dues and pay salaries they are not profit-making commercial organizations. Regulations which may be applicable to purely commercial organizations are not proper as applied to groups such as unions. See *Lorell* v. *Griffin*, 303 U. S. 444.

It should be noted that the Court below in asserting that there are instances where private rights must yield to the State power cited in support of this proposition *Ex Parte Thomas*, 141 Tex. 591, which was reversed by this Court recently; *Jones* v. *Opelika*, 316 U. S. 584, which was overruled on rehearing in 319 U. S. 103; *Carpenter & Joiners Union* v. *Ritters Cafe*, 315 U. S. 722, limiting secondary picketing, clearly has no relation to the case at bar; *Bryant* v. *Zimmerman*, 278 U. S. 63, is of no merit because the statute there aimed at the protection of the State against the Ku Klux Klan and other secret societies which unquestionably constituted a special menace to society.

By requiring disclosure, the State was acting properly within its police power. But even this statute, which prescribed penalties for violations to a serious threat to the peace of our way of life applied no previous restraint. *McKinney's Consolidated Laws of New York*, Vol. 8, §§ 53-56.

(B) *Section 16.*

While Section 16 is more narrowly drawn than Section 7 in that it prohibits a single act, it violates the First Amendment on its face by preventing the free right of association of all citizens to join organizations of their own choice so long as the organization itself is not illegal. No such claim of illegality, of course, is or can be made of unions.

The Court below says (R. 350), "The question simply is as to whether or not this regulation is within the bounds of reason or is it arbitrary and capricious?" This is not the question. Rather the question is whether this section of Bradford Act violates the rights guaranteed under the First Amendment to the United States Constitution and protected against arbitrary State action by the Fourteenth Amendment. Whether proper or not this section clearly abridges these guaranteed rights, thus there is no presumption of validity.

> "In every case, therefore, where legislative abridgement of the rights is asserted, the courts should be astute to examine the effects of the challenged legislation." *Schneider* v. *State, supra,* at p. 161.

While it may be true that certain unions exclude foremen from its membership (R. 269-289), under no circumstances would this fact give constitutional validity to such a legislative restriction. The Court below asserted that certain unions do not admit supervisory employees to membership (R. 350). But the Carpenters Union does not fear its supervisory members will betray the interest of the union. Petitioner B. E. Jones is such a supervisory

employee (R. 11) and is a member of the United Brotherhood of Carpenters and Joiners (R. 4). If this section is upheld he must therefore withdraw from the union of his choice. The right of employees to join unions of their own choice is a fundamental right guaranteed by the United States Constitution.

By enacting such legislation, the State is promoting industrial strife instead of healing it, as professed. One set of employees are set off against another. Because certain unions feel that supervisory employees may be subject to pressure from management and thus exclude such employees from membership does not sustain legislative fiat denying the right of certain employees to join unions of their own free choice.

II

(A) Section 15 is discriminatory and is a denial to unions of the protection under the Fourteenth Amendment to the United States Constitution.

As with the sections previously discussed there is no statement anywhere either in the record or in the statute which indicates what interest of the state is being protected. The court below refers to general language in the preamble: "The right to live involves the right to work." But nowhere is the assertion made or is there a finding that unions by this nebulous term "work permits" are endangering the right to live. When the State asserts its police power, it may not destroy indiscriminately all popular rights in its way. If any unions or their officials are guilty of wrongful practices, which is nowhere shown or alleged to be the fact, they may be prosecuted under the penal law. Why unions should be singled out for this severe restriction is not made clear. Such a provision thus discriminates against unions and their members without any just cause asserted. As such, Section 15 is a denial by the state of

Alabama of equal protection of the law guaranteed by the Fourteenth Amendment. *Yick Wo* v. *Hopkins*, 118 U. S. 356. As in the cited case, a particular class is set up for discrimination.

In addition Section 15 is a deprivation of property without due process of law. Persons who work under union contracts or auspices obtain the benefit of the union efforts to better their lot. The police power of the State cannot abruptly deprive a union from assessing a fee under these conditions without showing an interest to protect. This section prevents a union from collecting fees from non-union employees whom the Union permits to work under the benefits of a union agreement. The union members whose dues have supported the efforts of the Union to obtain a union contract are thus discriminated against in favor of non-union people who have not supported the Union. The latter obtain the benefit of the union contract without incurring any of the obligations. This is of particular importance in war time when, because of the shortage, the Union may not be able to supply a particular employer with sufficient union labor. Since the work must be done, non-union persons are permitted to work. When there is no showing of improper acts, fraud, etc., it is only proper that these people make a contribution to the Union which obtained the favorable conditions under which they work.

While property rights of unions or those of anyone else are not supreme over the authority of the State, they cannot be destroyed without an interest of the State to protect. Furthermore, fraud and other improper acts are punishable by the criminal statutes designed for that purpose. Here, the Legislature apparently did not even consider whether there were improper activities. Considering these facts, it must be said that this section is a deprivation of property without due process of law and is a denial of equal protection of the laws guaranteed against improper state action by the Fourteenth Amendment to the United States Constitution.

(B) The term "work permits" is so vague and nebulous as to require speculation as to its meaning.

With a criminal penalty hanging overhead, persons may not be required at the peril of life, liberty or property to guess as to the possible violation of a statute preventing the collection of sums for "work permits". See *Stromberg* v. *California*, 283 U. S. 359 and *In re Bell*, 190 Cal. 2d 488 As this court made abundantly clear in *Lanzetta* v. *New Jersey*, 306 U. S. 451, there must be a definition of the act made criminal where no definition exists in any other statute. The fact that the preamble argues that the "right to live involves the right to work" is not a finding by the Legislature that a substantial interest of people is at stake. How can these petitioners know when they are violating this act? It is not sufficient to say, as does the court below, that whether a specific act violates this section can be determined when the issue arises. At that time it will be too late, for the criminal penalties will have already been incurred. It is respectfully submitted that such a section violates the most fundamental rights of democratic government.

III

Sections 7 and 16 conflict with and deprive petitioners of rights expressly granted to them in the National Labor Relations Act.

The discussion above has shown that Section 7 denies to petitioners the right to self-organization into unions and the benefits of collective bargaining except upon the compliance with conditions laid down by the Legislature of the State of Alabama. These rights and these benefits have been expressly granted to the petitioners and all other employees by the National Labor Relations Act (49 Stat. 449).

It has been repeatedly held by this court from the earliest days of our Federal system that where in any field Congress has properly legislated, further legislation by the individual States is precluded. *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1. This doctrine has been extended to include cases in which the State has legislated in a manner and in a portion of the field where Congress could have but did not for its own reasons legislate. *Napier* v. *Atlantic Coastline R. Co.*, 272 U. S. 605.

In the instant case, Congress has expressly provided in the Federal Act "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." (49 Stat. 452). Section 7 of the Broadford Act, by forbidding a union to "function" unless the provisions of the act are complied with thus denies to a union the right to bargain collectively and denies to the members thereof the right to "engage in concerted activities" all of which activities are encompassed in the meaning of the word "function" as applied to labor unions.

The lower court sought to reconcile the conflict between the State and Federal Acts by citing the case of *Allen-Bradley, etc.* v. *Wisconsin Employment Relations Board*, 315 U. S. 740. At the outset, it should be pointed out that this court stated in that opinion, that "if the order of the State Board affected the status of the employees or if it caused forfeiture of collective bargaining rights, a distinctly different question would arise" (p. 751).

In the instant case, the issue is clearly one of whether the Act would deprive the petitioners of the right to collective bargaining. Under the State Law, assuming employees could join a union, the Union would be forbidden under penalty of fine and imprisonment from attempting to negotiate a contract with an employer or seeking relief before the National Labor Relations Board or engaging

in any of the activities which are included within the concept of collective bargaining.

The lower court further based its decision on this question upon the police power of the State which it was claimed constituted an exception to the rule of paramount legislative authority, and to this effect again referred to the *Allen-Bradley* case. The *Allen-Bradley* case was decided on the ground that the State had the power to prevent disturbances and breaches of the peace occasioned by disorderly picketing. Here, under the guise of the exercise of its police power, the State seeks to prevent the rights granted under the Federal Act which, as shown above, bear no relationship whatever to the evil, if any, which the Act seeks to prevent.

In *Napier* v. *Atlantic Coastline R. Co.*, supra, this court held that where Congress delegated to the Interstate Commerce Commission the power to determine the safety appliances to be used on railroad trains, no State even under the police power could require further appliances not ordered by the Commission.

In forbidding supervisory employees from becoming members in unions composed also of non-supervisory employees, the Act also deprives petitioners of the right as employees to join with other employees and to secure the benefits of unionization and collective bargaining. The court below sought to justify this section of the Act on the ground that reasonable classification was proper. Without entering into a discussion as to whether this did or did not constitute a reasonable classification, it is respectfully submitted that under the authority cited above, Congressional legislation removed from the State the power to make any distinction between employees, reasonable or otherwise. Congress has decided that any employee may join with any other employee regardless of activity, salary range or any other factor, for their mutual benefit and protection in industrial relations.

The fact that in some cases, the National Labor Relations Board may have excluded supervisory and administrative employees from a bargaining unit has no bearing upon the instant case. Firstly, the discretion to determine the bargaining unit was vested in the National Labor Relations Board pursuant to Section 9 of the Federal Act, 49 Stat. 453. Section 17 of the Bradford Act is an exercise of such discretion by the State and would, in a given case, contravene the decisions of the National Labor Relations Board pursuant to the authority vested in it by Congress.

Secondly, there are numerous cases in which the Board has *included* supervisory and administrative employees in the bargaining unit. Each case is to be determined upon the situation existing in a particular plant or factory. In the cases cited by the court below, the question was not whether the supervisory employees were properly part of the bargaining unit, but rather whether the company through certain of its supervisory employees sought to exert undue pressure to prevent the formation of a non-company union. It is respectfully submitted that the fact that these were supervisory employees was merely fortuitous and the decision would have been the same had the company sought to exert its pressure through certain non-supervisory employees friendly to the company and antagonistic to the Union.

It is respectfully submitted that Sections 7 and 16 of the Bradford Act, in licensing the right to join a labor union and to bargain collectively, have contravened the National Labor Relations Act and are in violation of Article VI of the Constitution.

CONCLUSION

It is respectfully submitted that Sections 7, 15 and 16 are a denial to petitioners of those rights guaranteed under the First Amendment to the United States Constitution, and protected against arbitrary state action by the Fourteenth Amendment.

Respectfully submitted,

PAUL O'DWYER,
New York, N. Y.,
Attorney for the Workers Defense League, *Amicus Curiae.*

MAX DELSON,
CARL RACHLIN,
LEONARD COHEN,
New York, N. Y.,
of Counsel.